CLIFF MEZEY (ON RECONSIDERATION)

IBLA 80-396 Decided August 12, 1982

Reconsideration of the Board's decision styled Cliff Mezey, 50 IBLA 157 (1980).

Cliff Mezey, 50 IBLA 157 (1980), vacated; State Office decision reversed.

1. Oil and Gas Leases: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Filing

Under the provisions of 43 CFR 3102.6-1(a)(2) (1979), where multiple agents were utilized in filing simultaneous oil and gas lease drawing entry card, the disclosure requirements applied only to the agent who signed the card.

APPEARANCES: Craig R. Carver, Esq., Denver, Colorado, for appellant; William R. Murray, Jr., Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Both the Bureau of Land Management (BLM) and Cliff Mezey (appellant) petitioned for reconsideration of the Board's decision styled Cliff Mezey, 50 IBLA 157 (1980), in which we affirmed a decision by the Colorado State Office, BLM, dated January 29, 1980, rejecting appellant's drawing entry card (DEC) in part because appellant had failed to comply with 43 CFR 3102.6-1 (1979). Appellant's DEC was drawn with first priority for parcel CO-393 in the July 1979 simultaneous oil and gas lease drawing. By Order dated December 15, 1980, we granted the petitions for reconsideration.

Appellant's DEC bore a rubber-stamped facsimile of his signature and was accompanied by statements by him and the Stewart Capital Corporation (Stewart). Appellant's statement indicated that appellant had "contracted with Stewart" in part for the purpose of submitting DEC's, to which Stewart would affix appellant's signature "by means of rubber stamp or other facsimile," with respect to selected parcels. The statements further indicate that there is no agreement or understanding between the parties or with any other person by which Stewart or such other person have received or are to receive any interest in a lease when issued.

In response to a BLM decision of September 10, 1979, requiring the filing of additional evidence, appellant submitted an agreement, entitled "Advisory and Service Agreement," between appellant and Melbourne Concept, Inc. (Melbourne), signed by both parties in June 1979. The agreement states in part: "The undersigned ('Client') hereby employs Melbourne Concept Inc., along with others, to appraise, select, and seek to acquire, acreage on oil and natural gas prospects for the estimated acreage at the rates and payment provisions set forth in the accompanying schedule." Subsequent to the January 1980 BLM decision rejecting his DEC, appellant clarified the status of his agreements with Stewart and Melbourne. In a letter to BLM, dated February 1, 1980, counsel for appellant stated at page 3:

> To summarize all of the relevant facts, Mr. Mezey has executed a contract with Melbourne, not with Stewart. The Mezey-Melbourne contract contemplates, however, that Melbourne has, in turn, contracted with Stewart to provide certain services to Mezey. Mezey was at all times aware of this situation, as evidenced by his signing of the statements of interest submitted with the DEC, and by the fact that he received Stewart's service brochure before executing the Melbourne contract.

Appellant enclosed a copy of a letter, dated December 29, 1977, signed by officials of Stewart and Melbourne, which confirmed an agreement between the parties. The letter states: "SCC [Stewart] agrees to perform certain filing services in behalf of MCI's [Melbourne's] clients pertaining to acquisition of State and Federal Oil, gas and geothermal leases."

In Cliff Mezey, supra at 161, we concluded that:

> Appellant's agreement was clearly with Melbourne Concept, but that agreement permitted Melbourne to use the services of others "to appraise, select and seek to acquire, acreage on oil and natural gas prospects." Melbourne in turn contracted with Stewart Capital to perform those services. * * * Thus, Melbourne's contractual and agency relationship with appellant continued. Melbourne was appellant's primary agent and the affixing of appellant's signature by Stewart by use of a rubber stamp was at the direction and in accordance with Melbourne's contract with Stewart.

We held that, in order to show the necessary agency and contractual authority as required by 43 CFR 3102.6-1(a)(2) (1979), the complete chain of agency-contract authority and relationships must be shown when the offer is filed.

In support of his petition for reconsideration, appellant essentially contends that he complied with 43 CFR 3102.6-1(a)(2) (1979), because the agent who signed his DEC (Stewart) submitted the statement required by that

regulation. 1/ On behalf of BLM, the Office of the Solicitor agrees with appellant's conclusion. In retrospect, we must concur.

Our original decision was generated, in large measure, by concern that, through the use of multiple agencies which would not be disclosed, an offeror or applicant could subvert the disclosure requirements and make more difficult the prevention of collusive or unfair filing schemes. We cannot say that this concern was groundless.

Nevertheless, it seems clear to the Board now that the then applicable regulation, 43 CFR 3102.6-1(a)(2) (1979), could not be fairly read to include a requirement that, where multiple agency arrangements existed, the entire chain of agency must be disclosed with the offer. By its terms, that regulation applied only to the agent who signed the DEC. And appellant correctly points out that the Department will not deprive an applicant of a preference right to a lease absent a clear violation of the regulations. See A. M. Shaffer, 73 I.D. 293 (1966). That being the case, it follows that the Board's decision was in error since the appellant was in technical compliance with 43 CFR 3102.6-1(a)(2) (1979), and, while certainly contrary to the spirit of the regulations, the failure to submit the additional evidence could not be said to be clearly contrary to the letter of the appliable regulation. 2/ Thus, our prior decision cannot stand and it is hereby vacated.

Moreover, insofar as the other grounds originally used by the State Office are concerned, we agree with appellant that they did not constitute a sufficient basis for rejection of the lease offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision

---

1/ 43 CFR 3102.6-1(a)(2) (1979) provided, in pertinent part:

"If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in- fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued."

2/ Under regulations subsequently adopted, appellant would be required to disclose each and every agency bearing on the filing of simultaneous oil and gas lease applications regardless of who actually affixed the signature. See 43 CFR 3102.2-6(a) (1980). Thus, the hiatus in the regulations was subsequently closed for future applicants. However, in its most recent proposed incarnation, the oil and gas regulations would substitute a self-certification system for the former system of disclosure. See 47 FR 28550, 28559 (June 30, 1982).

in Cliff Mezey, 50 IBLA 157 (1980), is vacated and the State Office decision is reversed and the case files are remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge